Feb 3 2000

Supreme Court, U.S.
FILED
FEB 3 2000
CLERK

Nos. 99-244, 99-253

In The

SUPREME COURT OF THE UNITED STATES

MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC.,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

MARATHON OIL COMPANY
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF THE STATES OF CALIFORNIA, NORTH CAROLINA, OKLAHOMA, OREGON, AND WASHINGTON, AS AMICI CURIAE IN SUPPORT OF RESPONDENT

BILL LOCKYER
Attorney General of the
State of California
RICHARD M. FRANK
Chief Assistant Attorney General
J. MATTHEW RODRIQUEZ
Senior Assistant Attorney General
JOHN A. SAURENMAN
Deputy Attorney General
Counsel of Record
300 South Spring Street,
Los Angeles, CA 90013
Telephone: (213) 897-2702

Attorneys for Amici Curiae

MICHAEL F. EASLEY
Attorney General of the
State of North Carolina

W.A. DREW EDMONDSON
Attorney General of the
State of Oklahoma

HARDY MYERS
Attorney General of the
State of Oregon

(Additional counsel listed on inside cover)

BEST AVAILABLE COPY

CHARLIE CONDON
Attorney General of the
State of South Carolina

CHRISTINE O. GREGOIRE
Attorney General of the
State of Washington

BEST AVAILABLE COPY

TABLE OF CONTENTS

		Page
Interest of the amici curiae		1
Summary of argument		4
Argument		5
I.	THE OCS LANDS ACT AND THE COASTAL ZONE MANAGEMENT ACT GRANT SPECIFIC AUTHORITY TO COASTAL STATE OVER OCS LEASING AND DEVELOPMENT	5
	A. An OCS Lease Conveys No Entitlements	5
	B. The CZMA Further Qualifies the Rights Under an OCS Lease	7
II.	IN OBTAINING OCS LEASES IN 1981, MOBIL AND MARATHON DID NOT ACQUIRE AN ENTITLEMENT TO EXPLORE, DEVELOP AND PRODUCE OIL CONTAINED IN THE LEASE AREA	10
CONCLUSION		14

TABLE OF AUTHORITIES

Page

Cases

American Petroleum Institute v. Knecht
609 F.2d 1306 (9th Cir. 1979) 3

American Petroleum Institute v. Knecht
456 F. Supp. 889 (C.D. Cal. 1978) 3

North Slope Borough v. Andrus
486 F. Supp. 332, 357 (D.D.C. 1979) 10

Secretary of the Interior v. California
464 U.S. 1356 (1984) . . . . . passim

Village of False Pass v. Clark
733 F.2d 605 (9th Cir. 1984) 10

Statutes

Coastal Zone Management Act
16 U.S.C. §1451, et seq.

16 U.S.C. § 1451 1
16 U.S.C. § 1452 1
16 U.S.C. § 1455(c)(8) 2
16 U.S.C. § 1456 7
16 U.S.C. § 1456(b) 2
16 U.S.C. § 1456(c)(1) 6, 7, 9
16 U.S.C. § 1456(c)(3) 2, 7, 11

Pub. L. No. 92-583, 86 Stat. 1285 7
Pub. L. No. 94-370, 90 Stat. 1018 8

Outer Banks Protection Act
Pub. L. No. 101-380, § 6003, 104 Stat. 484 5, 11, 12

Outer Continental Shelf Lands Act, as amended
43 U.S.C. § 1331, et seq.

43 U.S.C. § 1332(3) 6
43 U.S.C. § 1337 6
43 U.S.C. § 1340 6
43 U.S.C. § 1340(b) 3
43 U.S.C. § 1340(c)(2) 8
43 U.S.C. § 1344 6
43 U.S.C. § 1351 6
43 U.S.C. § 1351(a)(1) 12
43 U.S.C. § 1351(d) 3, 9

Legislative History

H. Rep. 1049, 92d Cong., 2d Sess (1972) 1, 7

H. Rep. 878, 94th Cong., 2d Sess (1976) 2

H. Rep. 881, 101st Cong., 2d Sess (1990) 2

H. Conf. Rep. 964, 101st Cong., 2d Sess. (1990) 9

136 Cong. Rec. H8068 (September 26, 1990) 2

136 Cong. Rec. H8069 (September 26, 1990) 2, 3

Legislative History of the Coastal Zone Management Act of 1972,as Amended in 1974 and 1976 With a Section-By-Section Index (U.S. Government Printing Office 1976) 1, 2, 7

INTEREST OF THE AMICI CURIAE

This case involves a contract dispute which pits Mobil Oil Exploration & Producing Southeast, Inc.("Mobil"), and Marathon Oil Company ("Marathon") against the United States. Central to the resolution of that dispute is the application of the Coastal Zone Management Act, 16 U.S.C. § 1451, et seq. ("CZMA"), to Outer Continental Shelf ("OCS") leases. It is this aspect of the matter which is of importance to the amici states. As discussed below, the authority which Congress in the CZMA granted to coastal states to review federal licenses and permits including those which relate to OCS activities is of great moment to these states. Thus, the amici states write here to explain fully the CZMA process and the manner in which it is integrated into the OCS process and to urge the Court not to alter the regulatory structure which Congress created.

Congress enacted the CZMA in 1972 in order to provide for comprehensive, coordinated planning for the protection and beneficial use of the coastal zone. 16 U.S.C. §§ 1451, 1452. At that time, Congress placed special emphasis on the objective of preserving the natural resources of the coastal zone both for this generation and for succeeding generations. 16 U.S.C. § 1452(1). In enacting the CZMA, Congress intended to establish an effective mechanism for the long term management of the valuable resources of the coastal zone by encouraging and assisting the states to exercise their regulatory authority through development of federally-approved coastal management programs. 16 U.S.C. §§ 1451, 1452; H. Rep. 1049, 92d Cong., 2d Sess. 9 (1972), reprinted in *Legislative History of the Coastal Zone Management Act of 1972, as Amended in 1974 and 1976 With a Section-By-Section Index* at 313 (U.S. Government Printing Office 1976) (hereafter, "*Legislative History of the Coastal Zone Management Act*"); *see also Secretary of the Interior v. California*, 464 U.S. 312, 316 (1984).

In the CZMA Congress encouraged the coastal states to develop coastal management programs through a system of

grants and other incentives with other benefits being available to a coastal state after its management program received federal approval. 16 U.S.C. §§ 1455(c)(8), 1456(b); *see also Secretary of the Interior v. California*, 464 U.S. at 316. Among the primary incentives which Congress included in the CZMA to encourage states to develop and implement comprehensive coastal management programs were the consistency provisions. *See, e.g.*, H. Rep. 878, 94th Cong., 2d Sess. 53 (1976), reprinted in *Legislative History of the Coastal Zone Management Act* at 939; H. Rep. 1012, 96th Cong., 2d Sess. 35 (1980), as reprinted in 1980 U.S. Code Cong. & Admin. News 7832, 7853; 136 Cong. Rec. H8068, H8069 (September 26, 1990) ("Congress provided two major incentives to encourage coastal states to develop coastal management programs: (1) financial and technical assistance in program development and implementation; and (2) the requirement that federal activities and projects, as well as federally-permitted activities, must be consistent with approved state programs (the federal consistency provision).")[1]

The federal consistency provisions subject federal activities and applications for federal licenses and permits to state review. In the case of federal licenses and permits for an activity affecting the coastal zone, if a state finds that the activity will not be conducted in a manner which is consistent with its federally-approved coastal management program, then the federal agency granting the license or permit is barred from issuing it. *See* 16 U.S.C. § 1456(c)(3). This "consistency" authority gives the coastal states with approved programs a great deal of influence over those federal licenses and permits including authority to prevent activities which are inconsistent with the states' programs from going forward.

---

1. Congress last enacted substantive amendments to the CZMA in 1990. The legislative history of the House bill is found in the Congressional Record. *See* H. Rep. 881, 101st Cong., 2d Sess. 167 (1990), as reprinted in 1990 U.S. Code Cong. & Admin. News 2017, 2175.

The vast majority of coastal states have responded to these congressional incentives and have adopted coastal zone management programs and obtained federal approval of them. By 1990, Congress reported that 29 of 35 eligible coastal states and territories had received federal approval for coastal management programs and that those coastal zone plans covered about 94 percent of the marine and Great Lakes coastline of the United States. 136 Cong. Rec. at H8069.

Coastal states such as California answered Congress' call to better manage and protect the coastal zone by adopting and implementing coastal management programs, and those coastal states have a clear interest in insuring that the congressional strategy crafted in the CZMA is both clearly understood and fully applied. This interest is heightened in the area of OCS leasing, exploration and development where Congress has granted specific rights to the coastal states. *See* 43 U.S.C. §§ 1340(b), 1351(d) (provisions extending consistency review to OCS plans of exploration and development and production plans).

California's experience with the CZMA program is illustrative. California's coastal management program received federal approval in 1978. That approval then withstood a vigorous legal challenge from the oil industry. *American Petroleum Institute v. Knecht*, 609 F.2d 1306 (9th Cir. 1979).[2] Since the California program received federal approval, the California Coastal Commission, the agency charged with implementing California's program, has reviewed numerous OCS projects for consistency with the state's federally-approved program. While the state has on some occasions objected to OCS proposals, it has on many occasions been able to have its concerns resolved through the consistency review process and to concur.

---

2. In fact, the American Petroleum Institute sought to enjoin federal approval of California's coastal management program in order to prevent the state from exercising its consistency powers. *See American Petroleum Institute v. Knecht*, 456 F. Supp. 889, 902-03 (C.D. Cal. 1978).

It is the position of California and the other amici states that the regulatory authority which Congress granted to them in the CZMA must not be compromised through this litigation. In particular, that authority must not be jeopardized by any holding that a successful bidder for an OCS lease somehow acquires an entitlement or other absolute right to explore and develop that lease. Rather, the amici states submit that in resolving this action, the Court should acknowledge the role which Congress crafted for the states.

SUMMARY OF ARGUMENT

1. The petitioners herein have asserted that the OCS leases which they acquired in 1981 gave them an entitlement to explore and develop the OCS offshore North Carolina. In making that assertion, the petitioners ignore the phased approach to OCS leasing and development which Congress adopted in the OCS Lands Act Amendments of 1978 and the role in the OCS process which Congress assigned to coastal states through the CZMA.

Congress adopted a phased approach to OCS leasing and development, and in so doing, Congress limited the rights which a successful bidder for an OCS lease acquires. As this Court held in *Secretary of the Interior v. California*, a successful bidder acquires only a priority over other interested parties. Moreover, those rights are further circumscribed because the CZMA grants coastal states with federally-approved coastal programs "considerable authority to veto" OCS exploration plans and development and production plans.

2. Mobil and Marathon acquired their leases in 1981 well after enactment of both the CZMA and the OCS Lands Act Amendments of 1978. Since November 1990 when North Carolina objected to the companies' plan of exploration because it was not consistent with the state's coastal zone program, the Secretary of the Interior has been barred from issuing a drilling permit to Mobil and Marathon. That bar has remained in effect regardless of the enactment of, or the repeal of, the Outer

Banks Protection Act ("OBPA"). The companies' real complaint in this case is not they have been barred from conducting exploratory activities but rather that Interior has not approved or disapproved their exploration plan notwithstanding their inability to proceed with exploration because of North Carolina's CZMA consistency objection.

ARGUMENT

I. THE OCS LANDS ACT AND THE COASTAL ZONE MANAGEMENT ACT GRANT SPECIFIC AUTHORITY TO COASTAL STATES OVER OCS LEASING AND DEVELOPMENT

Both in their petitions for certiorari and in their briefs on the merits, Mobil and Marathon assert that the OCS leases they acquired in 1981 gave them an entitlement to explore, develop, and produce the oil contained within those leased tracts. *See, e.g.*, Marathon Merits Brief at 4; Mobil Merits Brief at 2. It appears that the petitioners make these assertions in order to frame the context in which they make their arguments regarding rescission and restitution. While the amici states do not address those arguments on rescission and restitution, they do believe that it is important to present to the Court an accurate picture of the OCS leasing process including the limited nature of the rights conferred in an OCS lease and the manner in which the CZMA impacts those rights.

A. An OCS Lease Conveys No Entitlements

This Court has had occasion in the past to address the complex and highly regulated field of OCS oil and gas leasing. *Secretary of the Interior v. California*, 464 U.S. 312 (1984). Therein, the Court was addressing the question of whether an OCS lease sale was a federal activity which directly affected the coastal zone of an adjacent state and thus triggered consistency review pursuant to section 307(c)(1) of the CZMA, 16 U.S.C. § 1456(c)(1). In resolving that issue, the Court reviewed the OCS leasing and development process and relied

on the phased approach to OCS development in order to resolve the consistency issue. It is important here to examine the OCS process in order to provide the appropriate context for the resolution of the claims of Mobil and Marathon in this case.

In 1978, Congress enacted substantial amendments to the OCS Lands Act of 1953 in order to provide for "expeditious and orderly development, subject to environmental safeguards," of the resources of the OCS. 43 U.S.C. § 1332(3). At that time, Congress established four distinct phases in the OCS leasing and development process: formulation of a five year leasing program, 43 U.S.C. § 1344; preparation for OCS lease sales, the solicitation of bids and the award of leases, 43 U.S.C. § 1337; submission by the lessees of plans of exploration, 43 U.S.C. § 1340; and submission by the lessees of development and production plans, 43 U.S.C. § 1351.

As this Court noted in *Secretary of the Interior v. California*, 464 U.S. at 337:

> The leases in dispute here, however, were sold in 1981. By then it was quite clear that a lease sale by Interior did not involve the submission or approval of "any plan for the exploration or development of, or production from" the leased tract. Under the amended OCSLA, the purchase of a lease entitles the purchaser only to priority over other interested parties in submitting for federal approval a plan of exploration, production, or development. Actual submission and approval or disapproval of such plans occurs separately and later.

The Court's comment is equally applicable to the Mobil and Marathon leases at issue here.

In *Secretary of the Interior*, this Court reiterated on several occasions that the rights acquired by a successful bidder for an OCS lease were limited and qualified. *See, e.g., id.* at 317, 337, 342. While petitioners herein make the assertion that the leases gave them entitlements to explore and develop, those assertions are completely contrary to the holding of this Court in *Secretary of the Interior*.

B. The CZMA Further Qualifies the Rights Under an OCS Lease

Beyond the basic structure and requirements of the OCS Lands Act as amended, the consistency provisions of the CZMA also significantly qualify the rights which a successful bidder obtains with an OCS lease.

When the CZMA was enacted in 1972, Congress included section 307 (Interagency coordination and cooperation). 16 U.S.C. § 1456, Pub. L. No. 92-583, 86 Stat. 1285. As the House Committee on Merchant Marine and Fisheries explained, "This section contains requirements for the coordination and cooperation among Federal agencies and between Federal and State agencies, which will be necessary to achieve the purposes of this title, ..." H. Rep. 1049, 94th Cong., 2d Sess. 19 (1972), reprinted in *Legislative History of the Coastal Zone Management Act* at 322.

As enacted in 1972, the consistency provisions in section 307 of the CZMA did not refer to OCS activities. Rather, section 307(c)(1), 16 U.S.C. § 1456(c)(1), provided that federal agencies conducting and supporting activities that directly affect the coastal zone will do so in a manner which is consistent to the maximum extent practicable with federally-approved state coastal management programs. Pub. L. No. 92-583, 86 Stat. 1285. Similarly, section 307(c)(3), 16 U.S.C. § 1456(c)(3), provided that applicants for federal licenses and permits for activities that will affect the resources of the coastal zone had to certify that they would conduct their activities in a manner which was consistent with federally-approved state coastal programs. *Id.*

Anticipating the 1978 amendments to the OCS Lands Act, in 1976 Congress amended section 307(c)(3) of the CZMA to make the issuance of permits for OCS exploration, development and production subject to the consistency provisions of the CZMA. In 1976, Congress added section 307(c)(3)(B), 16 U.S.C. § 1456(c)(3)(B), which provided as follows in pertinent part:

> After the management program of any coastal state has been approved by the Secretary under section 1455 of

this title, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until--

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), . . . ; or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

Pub. L. No. 94-370, § 6, 90 Stat. 1018. By so amending the CZMA, Congress created a substantial role for the coastal states in the OCS exploration, development and production processes.

When Congress amended the OCS Lands Act in 1978, it specifically incorporated section 307(c)(3)(B) into the OCS

exploration and development process. Accordingly, in the provisions of the OCS Lands Act that deal with exploration plans, and development and production plans, Congress provided that the Secretary of the Interior could not issue any license or permit for any activity described in the plan unless "the State concurs or is conclusively presumed to concur with the consistency certification accompanying such plan pursuant to section 307(c)(3)(i) or (ii)" of the CZMA. *See* 43 U.S.C. §§ 1340(c)(2), 1351(d).

Thus, through the OCS Lands Act as amended in 1978 and the CZMA, as amended in 1976, Congress vested in coastal states with federally-approved coastal management plans considerable authority over OCS activities. As this Court stated in *Secretary of the Interior*:

> Congress has thus taken pains to separate the various federal decisions involved in formulating a leasing program, conducting lease sales, authorizing exploration, and allowing development and production. Since 1978, the purchase of an OCS lease, standing alone, entails no right to explore, develop, or produce oil and gas resources on the OCS. . . . States with approved CZMA plans retain considerable authority *to veto* inconsistent exploration or development plans put forward in those later stages.

Secretary of the Interior, 464 U.S. at 340-41; emphasis added.[3]

---

3. In *Secretary of the Interior*, this Court in addition determined that Congress did not intend that states with federally-approved CZMA plans review OCS lease sales for consistency pursuant to section 307(c)(1), 16 U.S.C. § 1456 (c)(1). In 1990 Congress amended section 307(c)(1) to broaden its applicability and to make clear that section 307(c)(1) would apply to OCS lease sales in particular. *See* H. Conf. Rep. 964, 101st Cong., 2d Sess. 669, 969 (1990), as reprinted in 1990 U.S. Code Cong. & Admin. News 2374, 2675 ("The conferees' principal objective in amending this section [307c)(1)] is . . . to make clear that outer Continental Shelf oil and gas lease sales are subject to the requirements of section 307(c)(1).") However, Congress did not alter the phased approach to OCS development which it crafted in the OCS Lands Act Amendments of 1978 or the

(continued...)

It is in this context of the coastal states' "considerable authority to veto" inconsistent OCS plans that the Court must resolve the dispute between Mobil and Marathon and the United States.

II. IN OBTAINING OCS LEASES IN 1981, MOBIL AND MARATHON DID NOT ACQUIRE AN ENTITLEMENT TO EXPLORE, DEVELOP AND PRODUCE OIL CONTAINED IN THE LEASE AREA

Regardless how this Court deals with the contract issues presented herein, its resolution of the case should not denigrate the authority over OCS activities which Congress has vested in the coastal states. Rather, the Court should acknowledge that authority in its resolution of this case. Also, at all times pertinent to this case, it has been clear that the OCS "oil and gas industry is a high risk business, and the industry accepts that some of its investments will not return producible oil and gas." *North Slope Borough v. Andrus*, 486 F. Supp. 332, 357 (D.D.C. 1979), *aff'd in part and rev'd in part,* 642 F.2d 589 (D.C. Cir. 1980); *see also Village of False Pass v. Clark*, 733 F.2d 605, 607 (9th Cir. 1984) (oil companies willing to spend almost a half-billion dollars to buy OCS leases even though chances of discovering commercial quantities of oil and gas were only about 28% and 37%).

At this point, the amici states believe that a few of the facts of this matter deserve particular attention.[4] Mobil and Marathon acquired their leases in 1981 and thus must be understood to have known that the "purchase of a lease entitles the purchaser only to priority over other interested parties . . . ." *Secretary of the Interior*, 464 U.S. at 337. At the time Mobil and Marathon purchased their leases, Congress had amended both the CZMA and the OCS Lands Act to state

---

3. (...continued)
applicability of section 307(c)(3)(B) to OCS exploration, development and production activities.

4. These facts are taken from the briefs of Mobil and Marathon.

expressly that coastal states with federally-approved CZM plans had a major role in permitting OCS activities.

Next, Mobil and Marathon agreed in 1989 to submit a draft plan of exploration ("POE") to Interior in order to allow Interior to prepare an analysis of the environmental impacts associated with the proposed exploration activities. Interior completed that report in June 1990, but Mobil and Marathon, for unexplained reasons, delayed submission of the POE until several months later on August 20, 1990. In the interim, Congress adopted the Outer Banks Protection Act ("OBPA"), Pub. L. No. 101-380, § 6003, 104 Stat. 484, which barred Interior from approving any POE, development and production plan ("DPP") or permit to drill until the later of October 1, 1991, or 45 days of continuous congressional session following the Secretary's submission to Congress of a certificate indicating that he had received a report from an Environmental Sciences Review Panel and that he had concluded that Interior had sufficient information to carry out its duties under the OCS Lands Act.

Shortly after Mobil and Marathon had submitted their final POE to Interior, they submitted their POE to North Carolina for consistency review pursuant to section 307(c)(3)(B) of the CZMA, 16 U.S.C. § 1456(c)(3)(B). On November 19, 1990, North Carolina objected to the plan as inconsistent with the North Carolina coastal management plan. That objection has been in place continuously since November 1990. Mobil and Marathon have neither modified their plan to achieve consistency with the North Carolina coastal management program nor have they persuaded the Secretary of Commerce to override the North Carolina objection. Because of the North Carolina objection, pursuant to the terms of the CZMA, Interior has been barred since November 1990 from issuing a drilling permit to Mobil and Marathon. That bar continues in effect at this time, and it prevents Mobil and Marathon from acting pursuant to the POE.

In April 1992, pursuant to the OBPA, the Secretary of the Interior certified to Congress that Interior possessed adequate information to make a "reasoned decision" about the activities proposed in the Mobil/Marathon POE. However, he declined to approve the POE until the completion of studies

which the Environmental Sciences Review Panel had recommended. In addition, the Environmental Sciences Review Panel had determined that additional studies would be required before delineation or production wells could be approved, and the Secretary indicated that those studies could not "begin in earnest" until there could be a review of the initial exploratory drilling.[5]

Thus, in October 1992, nearly two years after North Carolina's consistency objection, Mobil and Marathon filed this suit in the Federal Court of Claims. They asserted that because the OBPA barred the Secretary of the Interior from either approving or disapproving their plan of exploration, the United States was in material breach of the lease agreement.

This context illustrates how narrow the issue in this case is. The companies' complaint is not that the OBPA prevented them from engaging in actual exploratory activities on the OCS offshore North Carolina. Rather, the companies' claim is that because the OBPA prevented Interior from approving their plan, the federal government had materially breached the lease agreement. However, the effect of the North Carolina consistency objection cannot be ignored. Because of that objection – an objection entered pursuant to a statutory framework which was in place well before these leases were issued[6] – Mobil and Marathon have never been in a position to receive the drilling permits necessary to engage in actual

5. Mobil and Marathon both assert that because of the need for these additional studies, the OBPA constituted a bar to all further approvals for wells on their tracts. However, as is clear from the briefs of Mobil and Marathon, no consistency certifications for these activities ever have been submitted to North Carolina. Thus, the companies' assertion neglects the point that North Carolina has not even been given the opportunity to concur or object to those necessary consistency certifications. In the absence of North Carolina's concurrence or the Secretary of Commerce's override of a state objection, no other exploration or development and production activities could occur, notwithstanding the OBPA.

6. Congress also made clear that, with certain exceptions not relevant here, the exploration, development and production provisions of the OCS Lands Act were applicable to leases issued prior to the 1978 amendments to that statute. *See* 43 U.S.C. §§ 1340(b), 1351(a)(1).

exploratory activity. While the OBPA may have barred Interior from approving the exploration plan, the consistency objection barred Interior from granting any permits to drill on the leased tract and thus barred any actual exploratory activities.

The amici states do not take a position on whether the inability of the Secretary to approve or disapprove the POE under these circumstances constituted a material breach of the lease agreement. In reaching its decision on the question of breach of contract, however, this Court should recognize and give dignity to the role which Congress crafted for coastal states in the CZMA, including their role in reviewing and potentially objecting to OCS plans.

In particular, fifteen years after *Secretary of the Interior v. California*, this Court should not hold now that an OCS lease gives the lease purchaser an entitlement to explore and develop the lease. This Court held then that the purchaser obtained only a priority over others and that any exploration, development and production activities must be conducted in a manner which is consistent with federally-approved state coastal management programs. The companies here have not presented any argument for this Court to alter that holding.

CONCLUSION

For the foregoing reasons, the amici states urge the Court to reaffirm the role of states with federally-approved coastal management programs in the OCS process as expressed by Congress in the OCS Lands Act Amendments of 1978 and in the Coastal Zone Management Act and as expressed by this Court in *Secretary of the Interior v. California*.

Respectfully submitted,

BILL LOCKYER
Attorney General of the
State of California
RICHARD M. FRANK
Chief Assistant Attorney General
J. MATTHEW RODRIQUEZ
Senior Assistant Attorney General
JOHN A. SAURENMAN
Deputy Attorney General
Counsel of Record

HARDY MYERS
Attorney General of the
State of Oregon

CHRISTINE O. GREGOIRE
Attorney General of the
State of Washington

MICHAEL F. EASLEY
Attorney General of the
State of North Carolina

W.A. DREW EDMONDSON
Attorney General of the
State of Oklahoma

February 2000